



## **Staff Report**

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### **EXTENSION OF URGENCY ORDINANCE 1051 OF THE CITY OF BELMONT PURSUANT TO GOVERNMENT CODE SECTION 65858(a) IMPOSING A MORATORIUM ON THE ISSUANCE OF BUSINESS LICENSES, MASSAGE TECHNICIAN PERMITS, AND MASSAGE ESTABLISHMENT PERMITS**

Honorable Mayor and Council Members:

#### **Summary**

Staff requests that the City Council extend Urgency Ordinance 1051 of the City of Belmont imposing a moratorium on the issuance of business licenses, massage technician permits, and massage establishment permits while the City continues to review and revise its massage ordinance.

#### **Background**

On July 27, 2010, the City Council adopted Urgency Ordinance 1051 to prohibit the issuance of business licenses, massage technician permits, and massage establishment permits. That ordinance would expire on September 10, 2010, unless extended per Government Code Section 65858(a) for another 10 months and 15 days.

#### **Discussion**

Extension of this Urgency Ordinance will not affect any establishments employing only CAMTC-Certified massage practitioners or therapists, so long as they continue to meet certain requirements. At this time, staff's investigation indicates there are only two massage establishments in Belmont that employ CAMTC-Certified practitioners and that there is only one such practitioner in each establishment. The moratorium will allow staff the time to confirm this information.

A 4/5 vote is required to adopt this extension, which would then expire on July 27, 2011. Staff believes this is sufficient time to adopt a revised massage ordinance.

#### **General Plan/Vision Statement**

Regulating potentially illegitimate massage establishments is consistent with General Plan provisions to protect the health, safety and welfare of the citizens of Belmont.

**Fiscal Impact**

Applicants for new massage permits must currently pay a fee of \$500 and renewal applicants pay \$150; however, these fees mostly cover the cost of fingerprinting, and the cost of enforcement for illegitimate massage establishments far exceeds these amounts. Accordingly, staff believes that the moratorium will have a positive effect on City expenditures.

**Public Contact**

Posting of the City Council agenda; in addition, notice of this public hearing was published as required by Government Code Section 65090.

**Recommendation**

Staff recommends that the Council adopt the attached Extension of Urgency Ordinance 1051 and Moratorium.

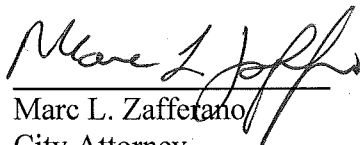
**Alternatives**

1. Adopt the proposed Extension of Urgency Ordinance and Moratorium.
2. Not adopt the proposed Extension of Urgency Ordinance and Moratorium.
3. Provide staff with alternative direction.

**Attachments**

- A. Proposed Extension of Urgency Ordinance 1051 and Moratorium

Respectfully submitted,

  
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Marc L. Zaffetano  
City Attorney

## Attachment A

### Proposed Extension of Urgency Ordinance 1051 and Moratorium

ORDINANCE NO. \_\_\_\_\_

EXTENSION OF URGENCY ORDINANCE 1051 OF THE CITY OF BELMONT  
PURSUANT TO GOVERNMENT CODE SECTION 65858(a) IMPOSING A MORATORIUM  
ON THE ISSUANCE OF ANY BUSINESS LICENSES, OR ANY NEW, OR EXPANSION OF  
ANY EXISTING, MASSAGE ESTABLISHMENT OR MASSAGE THERAPIST PERMITS

It is ordained by the City Council of the City of Belmont as follows:

**SECTION 1:**

WHEREAS, the City Council adopted Urgency Ordinance 1051 on July 27, 2010; and

WHEREAS, the City of Belmont (City) is authorized under California Government Code Section 51030 et seq. to regulate a massage business when carried on within the City; and

WHEREAS, in October 2003 the City adopted Chapter 13 of the Belmont Municipal Code which prohibits any person from practicing massage or operating a massage establishment without first securing a permit. Chapter 13 was intended to ensure that those offering massage services are qualified, trained, and conduct their work in a lawful and professional manner; and

WHEREAS, Chapter 13 placed certification, background, and certain hygiene regulations upon massage establishments; and

WHEREAS, as of July 27, 2010, the City currently has 10 permitted massage establishments and 46 permitted massage therapists; and

WHEREAS, on September 1, 2009, new state law instituted under Section 4600 of the California Business and Professions Code (SB 731) governing massage therapists and creating the California Massage Therapy Council (CAMTC) took effect regarding the certification of massage practitioners and therapists. While a full impact of the new regulations is not entirely clear, there have been significant changes in how massage practitioners and establishments will be licensed, zoned and permitted. The City of Belmont's Municipal Code needs to be reviewed and revised to reflect the new state law covering massage enterprises, therapists and practitioners; and

WHEREAS, as a result of this change in the law, the City requires an opportunity to consider appropriate amendments or additions to the City's Municipal Code that would govern the approval and issuance of permits for massage establishment permits and massage therapist permits; and

WHEREAS, the City Council of the City of Belmont seeks to protect the public health, safety and welfare of the citizens of Belmont from the negative secondary effects associated with massage establishments operating in violation of state and local law; and

WHEREAS, the City Council finds that in order to promote and protect the public health, safety and welfare, and to allow staff an opportunity to further study the impacts of such business activities on the health, safety and welfare, and to consider possible amendments to the City's Municipal Code, it is necessary that this urgency ordinance be enacted.

WHEREAS, an extension of Urgency Ordinance 1051 is necessary to allow the City to complete its revisions to its Massage Ordinance.

**SECTION 2:** The City Council does hereby, pursuant to Government Code Section 65858(a), extend Urgency Ordinance 1051 for 10 months and 15 days, prohibiting the issuance of business licenses, massage technician permits, and massage establishment permits within the City. No person, partnership, corporation, or other entity shall commence doing business as, or expand a massage practice or massage establishment, nor shall a permit or business license be issued to a massage technician, practitioner, or therapist, or to a massage establishment unless specifically excluded herein. The employment of any additional massage technicians, practitioners, or therapists, beyond the number allowed in a massage establishment as of the date that this ordinance is adopted, shall constitute expansion for purposes of this ordinance.

**SECTION 3:** This ordinance shall not prohibit the following:

1. The issuance or renewal of a massage establishment permit or business license for a massage establishment in which all of the massage technicians, practitioners and therapists hold a valid, unconditional CAMTC-issued certificate, and provided that any renewal seeks to maintain the business in its current location, and further provided that the massage establishment is operating in a manner, and housed within a building, which complies with all city, state, federal or otherwise applicable codes, rules, regulations, or laws;

2. The issuance or renewal of a massage technician, practitioner, or therapist permit or business license for persons holding a valid CAMTC-issued certificate as long as the person remains employed at the same massage establishment(s) where he or she was previously licensed and there have been no violations of city, state, federal or otherwise applicable codes, rules, regulation or laws by the employer or the employee;

3. Persons engaged as follows:

- a. Physicians, surgeons, chiropractors, osteopaths, nurses, physical therapists, or acupuncturists who are duly licensed to practice their professions in the state;
- b. Barbers, beauticians, cosmetologists, and estheticians who are duly licensed under the laws of the state while engaging in practices within the scope of their licenses;
- c. Employed at hospitals, nursing homes, sanitariums or any other health facility duly licensed by the state;

- d. Coaches or trainers acting within the scope of their employment at accredited high schools, junior colleges, colleges, or universities;
- e. Trainers of amateur, semi-professional and professional athletes or athletic teams while engaged in their training responsibilities for and with athletes, and trainers working in conjunction with a specific athletic event such a road races, track meets, triathlons, biathlons, or a similar single occurrence athletic or recreational event.

**SECTION 4:** Pursuant to Section 15001 of the California Environmental Quality Act (CEQA) guidelines, the City Council declares that this ordinance is exempt from CEQA based on the following findings:

A. This ordinance is not a project within the meaning of Section 15378 of the State CEQA guidelines because it has no potential for resulting in physical change in the environment directly or ultimately.

B. This ordinance is categorically exempt from CEQA under Section 15308 of the State CEQA guidelines, because it is a regulatory action taken by the City in accordance with Government Code Section 65858, to assure maintenance and protection of the environment pending the completion of contemplated Municipal Code revisions.

C. This ordinance is covered by the general rule that CEQA applies only to projects that have potential for causing a significant effect on the environment, and it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment.

**SECTION 5: Pending applications.** As to any applications for business licenses or permits under the City's massage ordinance that have already been accepted, processing and review of such applications shall be suspended during the pendency of this moratorium.

**SECTION 6: Severability.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Belmont hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of whether any one or more of those components were held to be unconstitutional, invalid or unenforceable.

**SECTION 7:** This Extension of Urgency Ordinance 1051 requires a 4/5 vote of approval of all of the members of the City Council, and goes into effect immediately upon its adoption and will expire on July 27, 2011.

**SECTION 8:** This Extension of Urgency Ordinance 1051 shall be published once within fifteen (15) days of its adoption.

Introduced this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\* \* \* \* \*

PASSED AND ADOPTED as an Ordinance of the City of Belmont at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

AYES, COUNCILMEMBERS: \_\_\_\_\_

NOES, COUNCILMEMBERS: \_\_\_\_\_

ABSENT, COUNCILMEMBERS: \_\_\_\_\_

ABSTAIN, COUNCILMEMBERS: \_\_\_\_\_

\_\_\_\_\_  
Mayor of the City of Belmont

ATTEST:

\_\_\_\_\_  
Clerk of the City of Belmont